

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RACHEL MARIE WHITTED.

Case No. 3:21-cv-00216-LRH-WGC

14

Plaintiff.

ORDER

LAURA.

Defendant.

I. DISCUSSION

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a former state prisoner. On August 17, 2021, this Court issued an order directing Plaintiff Rachel Marie Whitted to file her updated address and a non-prisoner application to proceed *in forma pauperis* with this Court by September 17, 2021. (ECF No. 5.) It is now a week past the September 17, 2021, deadline, and Whitted has not filed her updated address, filed a non-prisoner application to proceed *in forma pauperis*, or otherwise responded to the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
2 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
3 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
4 local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey
6 a court order, or failure to comply with local rules, the court must consider several factors:
7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
10 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
11 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 Here, the Court finds that the first two factors, the public's interest in expeditiously
13 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
14 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
15 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
16 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
17 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
18 disposition of cases on their merits—is greatly outweighed by the factors in favor of
19 dismissal discussed herein. Finally, a court's warning to a party that her failure to obey
20 the court's order will result in dismissal satisfies the “consideration of alternatives”
21 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
22 F.2d at 1424. The Court's order requiring Whitted to file her updated address and file a
23 non-prisoner application to proceed *in forma pauperis* with the Court by September 17,
24 2021, expressly stated: “IT IS FURTHER ORDERED that, if [Whitted] fails to timely
25 comply with this order, this case will be subject to dismissal without prejudice.” (ECF No.
26 6 at 2.) Thus, Whitted had adequate warning that dismissal would result from her
27 noncompliance with the Court's order to file her updated address and a non-prisoner
28 application to proceed *in forma pauperis* by September 17, 2021.

II. CONCLUSION

It is therefore ordered that this action is dismissed without prejudice based on Whitted's failure to file an updated address and a non-prisoner application to proceed *in forma pauperis* in compliance with this Court's August 17, 2021, order.

It is further ordered that the Clerk of Court will enter judgment accordingly.

DATED THIS 30th day of September 2021.

Skinner
United States District Court